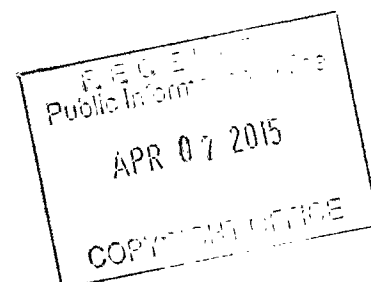


PUBLIC

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.



In the Matter of

DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (*WEB IV*)

Docket No. 14-CRB-0001-WR
(2016–2010)

LICENSEE SERVICES' MOTION FOR EXPEDITED
ISSUANCE OF SUBPOENAS TO: BEATS MUSIC, LLC; SPOTIFY USA INC.;
RHAPSODY INTERNATIONAL INC.; AND NOKIA CORPORATION

Pursuant to 17 U.S.C. § 803(b)(6)(C)(ix) and 37 C.F.R. § 351.9(e), iHeartMedia, Inc. and the National Association of Broadcasters (together, the “Services”) hereby respectfully move the Copyright Royalty Judges to issue subpoenas commanding Beats Music, LLC (“Beats”),¹ Spotify USA Inc. (“Spotify”), Rhapsody International Inc. (“Rhapsody”), and Nokia Corporation (“Nokia”) (collectively, the “Subpoenaed Services”) to produce documents in the above-captioned proceeding.² On April 2, 2015, the Judges denied – without prejudice – a motion to strike new testimony relating to direct licenses between those four licensees and the major record labels. The Judges, however, explained that the propriety of the late testimony “turns on whether any or all of those four licenses are sufficiently similar to the benchmarks relied up by any of the Licensee Services.” If the new licenses are shown to be “sufficiently dissimilar to the [non-]

¹ Beats is now wholly owned by Apple and was largely covered by the subpoena to Apple. See <http://www.beatsmusic.com/legal> (“Beats Music, LLC, a wholly-owned subsidiary of Apple Inc.”). The Services ask for the issuance of a separate subpoena related to Beats to focus specifically on “The Sentence” service discussed by Dr. Rubinfeld, including any internal Beats analyses or discussion of its expectations or understanding of the additional value or functionality Beats received in its deals with the record labels identified in Dr. Rubinfeld’s testimony. See Rubinfeld CWRT at 42-45.

² The Services are attaching proposed subpoenas hereto as Attachments A-D.

interactive benchmarks upon which the Licensee Services have relied,” the testimony about them “would not constitute meaningful rebuttal testimony.” Order at 11. Accordingly, the Judges granted the Services leave to seek additional discovery in order to have a more “comprehensive record” and to allow the Services to prepare the appropriate rebuttal testimony permitted by the Order. *Id.* at 9-11.

Grant of a subpoena allowing limited discovery from the four licensees meets the statutory standards for a subpoena as articulated previously in this proceeding. *First*, the evidence “sought in the proposed subpoena [is] central to the resolution of the proceeding (or [will] lead to the disclosure of information that is).” Order Denying, Without Prejudice, Motions for Issuance of Subpoenas Filed by Pandora Media, Inc. and the National Association of Broadcasters at 4 (Apr. 3, 2014). *Second*, as with the pending Apple Motion,³ and given the nature of the particular documents sought here – the *internal* analyses and discussion of the Subpoenaed Services that were counterparties to the labels in the deals – the information necessary to properly evaluate the agreements is exclusively within those services’ possession, and “it is unlikely” these documents “will be obtained and presented to the Judges unless the subpoena issues.” *Id.*

In his corrected written rebuttal testimony (“CWRT”), Dr. Rubinfeld concedes there are functional differences between the Subpoenaed Services and DMCA-compliant non-interactive services.⁴ As a result, it is necessary for the Services to obtain documents to understand how the

³ See Licensee Services’ Motion for Expedited Issuance of Subpoenas to Apple, Inc. (filed Mar. 30, 2015) (“Apple Motion”).

⁴ For example, Dr. Rubinfeld notes that Spotify’s free service offers a “Shuffle” service that permits users “to hear a mix of an artist’s album or the artist plus similar tracks.” Rubinfeld CWRT at 39. He also observed that Nokia’s MixRadio “permits users to play cached radio stations.” *Id.* at 47. And he noted that several of the services’ agreements were structured in such a way as to incentivize those services to convert to an interactive model. *Id.* at 44 (alleging that Beats’ “[redacted]”); *id.* at 46 (asserting that “‘The Sentence’ service, Spotify’s free service is intended as a [redacted].”).

Subpoenaed Services valued or projected the value of additional, non-DMCA-compliant functionality at the time of the negotiations. It is also necessary for the Services and the Judges to understand the value the Subpoenaed Services contemplated in entering into the licensing agreements more generally.

Just as with the Apple Motion, the documents the Services seek from these entities are necessary to understand the buyers' understanding of the rights and compensation for which they had bargained and to evaluate the anticipated economics of the license agreements. This information is critical to the Services' ability to prepare their amended rebuttal testimony and to develop the "comprehensive record" desired by the Judges. For that reason, the requested subpoenas are appropriate because "the Copyright Royalty Judges' resolution of the proceeding would be substantially impaired by the absence of such testimony." 17 U.S.C.

§ 803(b)(6)(C)(ix); *see also* 37 C.F.R. § 351.9(e).

CONCLUSION

For the foregoing reasons, the Judges should grant the Services' motion and issue the requested subpoenas. Given the shortness of the remaining schedule, the Services request that the Judges require the Subpoenaed Services to respond to the subpoenas by April 14, 2015.

Dated: April 7, 2015

Respectfully submitted,

iHEARTMEDIA, INC.

/s/ Kevin J. Miller

John Thorne
Kevin J. Miller
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
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Counsel for iHeartMedia, Inc.

CERTIFICATE OF SERVICE

I, Kevin J. Miller, hereby certify that a copy of the foregoing **PUBLIC** version of the (i) Licensee Services' Motion for Expedited Issuance of Subpoenas to: Beats Music, LLC; Spotify USA Inc.; Rhapsody International Inc.; and Nokia Corporation; (ii) Attachments A - D (iii) Declaration of Kevin J. Miller; (iv) Redaction Log have been served on this 7th day of April 2015 on the following persons:

<p>Dale M. Cendali, Esq. Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022 dale.cendali@kirkland.com</p> <p><i>Counsel for Beats Music, LLC</i></p>	<p>Jeffrey Coviello Melissa A. Finkelstein Ryan A. Kane Wollmuth Maher & Deutsch LLP 500 Fifth Avenue New York, NY 10110 jcoviello@wmd-law.com mfinkelstein@wmd-law.com rkane@wmd-law.com</p> <p><i>Counsel for Spotify USA Inc.</i></p>
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<p>Frederick J. Kass Intercollegiate Broadcasting System, Inc. 367 Windsor Highway New Windsor, NY 12553-7900 ibs@ibsradio.org ibshq@aol.com</p> <p><i>Intercollegiate Broadcasting System, Inc.</i></p>	<p>Jane Mago, Esq. Suzanne Head National Association of Broadcasters 1771 N Street, NW Washington, DC 20036 jmago@nab.org shead@nab.org</p> <p><i>National Association of Broadcasters</i></p>

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<p>R. Bruce Rich Todd D. Larson Sabrina A. Perelman Benjamin E. Marks David E. Yolkut Elisabeth M. Sperle Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153 r.bruce.rich@weil.com todd.larson@weil.com sabrina.perelman@weil.com benjamin.marks@weil.com david.yolkut@weil.com elisabeth.sperle@weil.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>	<p>Gary R. Greenstein Wilson Sonsini Goodrich & Rosati 1700 K Street, NW, 5th Floor Washington, DC 20006 ggreenstein@wsgr.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>
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<p>Patrick Donnelly Sirius XM Radio Inc. 1221 Avenue of the Americas 36th Floor New York, NY 10020 patrick.donnelly@siriusxm.com</p> <p><i>Sirius XM Radio Inc.</i></p>	<p>Paul Fakler Arent Fox LLP 1675 Broadway New York, NY 10019 paul.fakler@arentfox.com</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>
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Counsel for iHeartMedia, Inc.

Attachment A

PUBLIC

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

**DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (*WEB IV*)**

**Docket No. 14-CRB-0001-WR
(2016–2010)**

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS

THE COPYRIGHT ROYALTY BOARD TO:	<i>(name and address of person being subpoenaed)</i> Beats Music LLC The Corporation Trust Company Corporation Trust Center 1209 Orange St., Wilmington, DE 19801 302-658-7581
1. At the Request of: <i>(party name)</i> iHeartMedia, Inc.	<i>(name, address, and telephone number of contact person)</i> John Thorne Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street N.W., Suite 400 Washington, D.C. 20036 (202) 326-7900

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection or copying of the material requested in the attached **Schedule A**.

Place: Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street N.W., Suite 400 Washington, D.C. 20036	Date and Time: April 14, 2015 at 9:00 am (EST)
Issuing Officer Signature and Title:	Date:
Issuing Officer's Name, Address, and Telephone Number:	

PROOF OF SERVICE		
SERVED	Date	Place
Served on (Print Name)		Manager or Service
Served by (Print Name)		Title
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of American that the foregoing information contained in the Proof of Service is true and correct.</p> <p>Executed on this ____ day of _____, 20__</p> <p style="text-align: right;">_____ Signature of Server</p> <p style="text-align: right;">_____ Address of Server</p>		

SCHEDULE A

DEFINITIONS

1. "Record Company" means any entity that owns sound recording copyrights, including any and all subsidiary or affiliate recording companies and labels.
2. "Beats," "you" and "your" shall mean Beats Music, LLC. and its directors, officers, board members, employees, subsidiaries, parent corporations, divisions, affiliated companies, predecessors, successors, agents, representatives, and anyone else acting on its behalf.
3. "Document" or "Documents" shall have the same meaning as the term "document" in Federal Rule of Civil Procedure 34(a)(1) and shall include all such items, including electronically stored information, that would be subject to inspection and copying under that Rule, including the original and any non-identical copy of, any written, printed, typed, photographed, or recorded materials, including but not limited to writings, notes, memoranda, agreements, contracts, drafts, mark-ups, redlined materials, proposals, offers, meeting minutes, agenda, reports, calendar or diary entries, drawings, graphs, charts, logs, photographs, phone records, tape recordings, computer disks, computer printouts or tape, email or any other data compilations from which information can be obtained or translated. The term "Document" also means every copy of a document where such copy is not an identical duplicate of the original, whether because of deletions, underlinings, showing of blind copies, initialing, signatures, receipt stamps, comments, notations, differences in stationary, or any other difference or modification of any kind.
4. "Relevant Record Labels" shall include Universal Music Group, UMG Recordings, Inc. (collectively, "Universal"), Warner Music, Inc., WEA International Inc.

(collectively, "Warner"), Sony Music Entertainment ("Sony"), Beggars Group ("Beggars"), and Music and Entertainment Rights Licensing Independent Network, B.V. ("Merlin").

5. Whenever appropriate in these requests, the singular form shall include the plural form and vice versa. The connectors "and" and "or" are terms of inclusion, not exclusion, and they shall be construed as necessary to bring within the scope of each request each Document that, if construed otherwise, might be considered to be outside of the request's scope. The word "including" means "including but not limited to." The words "any" and "all" shall be mutually interchangeable and shall not be construed to limit any Document Request.

INSTRUCTIONS

1. These requests are continuing in nature, and in the event Beats becomes aware of additional responsive information or Documents at any time through the conclusion of this proceeding, Beats is requested promptly to provide such additional information or documents.

2. These requests seek information related to your activities in the United States. To the extent responsive Documents encompass activities both within and outside the United States, they should be produced in full.

3. The responses to each request shall include Documents that are within your possession, custody, or control, or are otherwise known or available to you, including Documents in the possession, custody, or control of your attorneys, agents, employees, accountants, consultants, representatives, or any other person acting or purporting to act on your behalf.

4. Each request should be answered separately and in order.

5. If you object to any request or sub-part thereof on a claim of any privilege, including an assertion of the attorney-client privilege or a claim that responsive Documents

constitute attorney work product, you are hereby requested to provide at the time of production the basis for the asserted privilege or immunity, set forth for each withheld Document, including the following information: (i) the date of the Document; (ii) the name of the Document's originator or creator, the name of the person(s) to whom it is addressed, the names of each person who was shown copies or to whom copies were distributed and the names of each person participating in the preparation of the document or in whose name the document was prepared; (iii) a general physical description of the type of Document, and the subject matter to which it pertains; (iv) the Document's current custodian; and (v) a statement of the precise basis upon which the document has been redacted or withheld, including the specific nature of the privilege or immunity claimed and the detailed ground for claiming such privilege or immunity.

6. If, for any reason other than a claim of privilege, you refuse to respond to any request herein, state the grounds upon which such refusal is based with sufficient particularity to permit a determination of whether such refusal is proper.

7. If, in answering these requests, you claim that any request or portion of a request, or a definition or instruction applicable thereto, is ambiguous, do not use such a claim as a basis for refusing to respond, but rather set forth as a part of your response the language you claim is ambiguous and the construction you have used to respond to the individual request.

8. If there are no Documents responsive to any particular request, you shall expressly state as much in your response to that request.

9. Each of the foregoing definitions and instructions is hereby incorporated by reference into, and shall be deemed a part of, each and every other definition and instruction contained herein as well as each specific request set forth below.

10. Unless otherwise specified, the Documents requested are those referring to, or created during, the period from January 1, 2011 to the present.

REQUESTS FOR DOCUMENTS

1. For each of Beats's agreements with the Relevant Record Labels relating to "The Sentence" service (the "Service"), documents sufficient to demonstrate, as of the time the agreement was executed, Beats's projections for:

- (a) total performances of the labels' music through the Service;
- (b) total compensation from Beats to each individual label for performances through the Service; and
- (c) the effective per-performance royalty from Beats to the labels for performances through the Service.

This Request seeks documents sufficient to demonstrate Beats's projections on a month-by-month basis or, if such documents do not exist, for the shortest time period for which such projections do exist.

2. For each of Beats's agreements with the Relevant Record Labels relating to the Service, documents sufficient to demonstrate:

- (a) total performances of the labels' music through the Service;
- (b) total compensation from Beats to each individual label for performances through the Service; and
- (c) the effective per-performance royalty from Beats to the labels for performances through the Service.

This Request seeks documents sufficient to demonstrate (a), (b), and (c) on a month-by-month basis.

3. Documents discussing, analyzing, or evaluating [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] including documents

sufficient to show:

(a) whether each such [REDACTED]

[REDACTED] under the agreement;

(b) the course of the parties' negotiations related to each such [REDACTED]

[REDACTED]; and

(c) Beats's understanding of whether compensation under each such [REDACTED]

[REDACTED]

[REDACTED]

4. Documents discussing, analyzing, or evaluating any Beats plan that had been formulated or proposed at the time the webcasting licenses with the Relevant Record Labels were entered to use the Service to promote other lines of business or sources of revenue for Beats. This request does not include documents discussing, analyzing, or evaluating any Beats plan that was formulated after the webcasting licenses were entered.

5. Documents discussing, analyzing, or evaluating any potential precedential effect of any agreement with the Relevant Record Labels relating to the Service on the rates to be set for webcasting by the Copyright Royalty Board.

6. Documents discussing, analyzing, or evaluating whether Beats would have launched or attempted to launch [REDACTED]

PUBLIC

[REDACTED]

Attachment B .

PUBLIC

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (*WEB IV*)

Docket No. 14-CRB-0001-WR
(2016-2010)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS

THE COPYRIGHT ROYALTY BOARD TO:	<i>(name and address of person being subpoenaed)</i> Spotify USA Inc. National Registered Agents, Inc 160 Greentree Dr. Ste. 101 Dover, DE 19904
1. At the Request of: <i>(party name)</i> iHeartMedia, Inc.	<i>(name, address, and telephone number of contact person)</i> John Thorne Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street N.W., Suite 400 Washington, D.C. 20036 (202) 326-7900

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection or copying of the material requested in the attached **Schedule A**.

Place: Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street N.W., Suite 400 Washington, D.C. 20036	Date and Time: April 14, 2015 at 9:00 am (EST)
Issuing Officer Signature and Title:	Date:
Issuing Officer's Name, Address, and Telephone Number:	

PROOF OF SERVICE		
SERVED	Date	Place
Served on (Print Name)		Manager or Service
Served by (Print Name)		Title
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of American that the foregoing information contained in the Proof of Service is true and correct.</p> <p>Executed on this ____ day of _____, 20__</p> <p style="text-align: right;">_____ Signature of Server</p> <p style="text-align: right;">_____ Address of Server</p>		

SCHEDULE A

DEFINITIONS

1. "Record Company" means any entity that owns sound recording copyrights, including any and all subsidiary or affiliate recording companies and labels.
2. "Spotify," "you" and "your" shall mean Spotify USA Inc. and its directors, officers, board members, employees, subsidiaries, parent corporations, divisions, affiliated companies, predecessors, successors, agents, representatives, and anyone else acting on its behalf.
3. "Document" or "Documents" shall have the same meaning as the term "document" in Federal Rule of Civil Procedure 34(a)(1) and shall include all such items, including electronically stored information, that would be subject to inspection and copying under that Rule, including the original and any non-identical copy of, any written, printed, typed, photographed, or recorded materials, including but not limited to writings, notes, memoranda, agreements, contracts, drafts, mark-ups, redlined materials, proposals, offers, meeting minutes, agenda, reports, calendar or diary entries, drawings, graphs, charts, logs, photographs, phone records, tape recordings, computer disks, computer printouts or tape, email or any other data compilations from which information can be obtained or translated. The term "Document" also means every copy of a document where such copy is not an identical duplicate of the original, whether because of deletions, underlinings, showing of blind copies, initialing, signatures, receipt stamps, comments, notations, differences in stationary, or any other difference or modification of any kind.
4. "Relevant Record Labels" shall include Universal Music Group, UMG Recordings Services, Inc. (collectively, "Universal"), Warner Music, Inc., WEA International

Inc. (collectively, "Warner"), Sony Music Entertainment ("Sony"), and Music and Entertainment Rights Licensing Independent Network, B.V. ("Merlin").

5. Whenever appropriate in these requests, the singular form shall include the plural form and vice versa. The connectors "and" and "or" are terms of inclusion, not exclusion, and they shall be construed as necessary to bring within the scope of each request each Document that, if construed otherwise, might be considered to be outside of the request's scope. The word "including" means "including but not limited to." The words "any" and "all" shall be mutually interchangeable and shall not be construed to limit any Document Request.

INSTRUCTIONS

1. These requests are continuing in nature, and in the event Spotify becomes aware of additional responsive information or Documents at any time through the conclusion of this proceeding, Spotify is requested promptly to provide such additional information or documents.

2. These requests seek information related to your activities in the United States. To the extent responsive Documents encompass activities both within and outside the United States, they should be produced in full.

3. The responses to each request shall include Documents that are within your possession, custody, or control, or are otherwise known or available to you, including Documents in the possession, custody, or control of your attorneys, agents, employees, accountants, consultants, representatives, or any other person acting or purporting to act on your behalf.

4. Each request should be answered separately and in order.

5. If you object to any request or sub-part thereof on a claim of any privilege, including an assertion of the attorney-client privilege or a claim that responsive Documents

constitute attorney work product, you are hereby requested to provide at the time of production the basis for the asserted privilege or immunity, set forth for each withheld Document, including the following information: (i) the date of the Document; (ii) the name of the Document's originator or creator, the name of the person(s) to whom it is addressed, the names of each person who was shown copies or to whom copies were distributed and the names of each person participating in the preparation of the document or in whose name the document was prepared; (iii) a general physical description of the type of Document, and the subject matter to which it pertains; (iv) the Document's current custodian; and (v) a statement of the precise basis upon which the document has been redacted or withheld, including the specific nature of the privilege or immunity claimed and the detailed ground for claiming such privilege or immunity.

6. If, for any reason other than a claim of privilege, you refuse to respond to any request herein, state the grounds upon which such refusal is based with sufficient particularity to permit a determination of whether such refusal is proper.

7. If, in answering these requests, you claim that any request or portion of a request, or a definition or instruction applicable thereto, is ambiguous, do not use such a claim as a basis for refusing to respond, but rather set forth as a part of your response the language you claim is ambiguous and the construction you have used to respond to the individual request.

8. If there are no Documents responsive to any particular request, you shall expressly state as much in your response to that request.

9. Each of the foregoing definitions and instructions is hereby incorporated by reference into, and shall be deemed a part of, each and every other definition and instruction contained herein as well as each specific request set forth below.

10. Unless otherwise specified, the Documents requested are those referring to, or created during, the period from January 1, 2011 to the present.

REQUESTS FOR DOCUMENTS

1. For each of Spotify's agreements with the Relevant Record Labels relating to Spotify's free, ad-supported service, including its "Shuffle" service (collectively, the "Service"), documents sufficient to demonstrate, as of the time the agreement was executed, Spotify's projections for:

- (a) total performances of the labels' music through the Service;
- (b) total compensation from Spotify to each individual label for performances through the Service; and
- (c) the effective per-performance royalty from Spotify to the labels for performances through the Service.

This Request seeks documents sufficient to demonstrate Spotify's projections on a month-by-month basis or, if such documents do not exist, for the shortest time period for which such projections do exist.

2. For each of Spotify's agreements with the Relevant Record Labels relating to the Service, documents sufficient to demonstrate:

- (a) total performances of the labels' music through the Service;
- (b) total compensation from Spotify to the labels for performances through the Service; and
- (c) the effective per-performance royalty from Spotify to the labels for performances through the Service.

This Request seeks documents sufficient to demonstrate (a), (b), and (c) on a month-by-month basis.

3. Documents discussing, analyzing, or evaluating [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] including

documents sufficient to show:

- (a) whether each such [REDACTED]

[REDACTED]

under the agreement;

- (b) the course of the parties' negotiations related to each such [REDACTED]

[REDACTED]; and

- (c) Spotify's understanding of whether compensation under each such [REDACTED]

[REDACTED]

[REDACTED]

4. Documents discussing, analyzing, or evaluating any Spotify plan that had been formulated or proposed at the time the webcasting licenses with the Relevant Record Labels were entered to use the Service to promote other lines of business or sources of revenue for Spotify. This request does not include documents discussing, analyzing, or evaluating any Spotify plan that was formulated after the webcasting licenses were entered.

5. Documents discussing, analyzing, or evaluating any potential precedential effect of any agreement with the Relevant Record Labels relating to the Service on the rates to be set for webcasting by the Copyright Royalty Board.

6. Documents discussing, analyzing, or evaluating whether Spotify would have launched or attempted to launch [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Attachment C

PUBLIC

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

**DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (*WEB IV*)**

**Docket No. 14-CRB-0001-WR
(2016–2010)**

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS

THE COPYRIGHT ROYALTY BOARD TO:	<i>(name and address of person being subpoenaed)</i> Rhapsody International Inc. Corporation Service Company 2711 Centerville Rd. Ste. 400 Wilmington, DE 19808 (302) 636-5401
1. At the Request of: <i>(party name)</i> iHeartMedia, Inc.	<i>(name, address, and telephone number of contact person)</i> John Thorne Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street N.W., Suite 400 Washington, D.C. 20036 (202) 326-7900

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection or copying of the material requested in the attached **Schedule A**.

Place: Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street N.W., Suite 400 Washington, D.C. 20036	Date and Time: April 14, 2015 at 9:00 am (EST)
--	---

Issuing Officer Signature and Title:	Date:
Issuing Officer's Name, Address, and Telephone Number:	

PROOF OF SERVICE			
SERVED	Date	Place	
Served on (Print Name)		Manager or Service	
Served by (Print Name)		Title	
DECLARATION OF SERVER			
<p>I declare under penalty of perjury under the laws of the United States of American that the foregoing information contained in the Proof of Service is true and correct.</p> <p>Executed on this day of , 20</p> <p style="text-align: right;">Signature of Server</p> <p style="text-align: right;">Address of Server</p>			

SCHEDULE A

DEFINITIONS

1. "Record Company" means any entity that owns sound recording copyrights, including any and all subsidiary or affiliate recording companies and labels.
2. "Rhapsody," "you" and "your" shall mean Rhapsody International Inc. and its directors, officers, board members, employees, subsidiaries, parent corporations, divisions, affiliated companies, successors, predecessors, agents, representatives, and anyone else acting on its behalf.
3. "Document" or "Documents" shall have the same meaning as the term "document" in Federal Rule of Civil Procedure 34(a)(1) and shall include all such items, including electronically stored information, that would be subject to inspection and copying under that Rule, including the original and any non-identical copy of, any written, printed, typed, photographed, or recorded materials, including but not limited to writings, notes, memoranda, agreements, contracts, drafts, mark-ups, redlined materials, proposals, offers, meeting minutes, agenda, reports, calendar or diary entries, drawings, graphs, charts, logs, photographs, phone records, tape recordings, computer disks, computer printouts or tape, email or any other data compilations from which information can be obtained or translated. The term "Document" also means every copy of a document where such copy is not an identical duplicate of the original, whether because of deletions, underlinings, showing of blind copies, initialing, signatures, receipt stamps, comments, notations, differences in stationary, or any other difference or modification of any kind.
4. "Relevant Record Labels" shall include Universal Music Group, Universal International Music B.V. (collectively, "Universal"), Warner Music, Inc. ("Warner"), and Sony Music Entertainment ("Sony").

5. Whenever appropriate in these requests, the singular form shall include the plural form and vice versa. The connectors “and” and “or” are terms of inclusion, not exclusion, and they shall be construed as necessary to bring within the scope of each request each Document that, if construed otherwise, might be considered to be outside of the request’s scope. The word “including” means “including but not limited to.” The words “any” and “all” shall be mutually interchangeable and shall not be construed to limit any Document Request.

INSTRUCTIONS

1. These requests are continuing in nature, and in the event Rhapsody becomes aware of additional responsive information or Documents at any time through the conclusion of this proceeding, Rhapsody is requested promptly to provide such additional information or documents.

2. These requests seek information related to your activities in the United States. To the extent responsive Documents encompass activities both within and outside the United States, they should be produced in full.

3. The responses to each request shall include Documents that are within your possession, custody, or control, or are otherwise known or available to you, including Documents in the possession, custody, or control of your attorneys, agents, employees, accountants, consultants, representatives, or any other person acting or purporting to act on your behalf.

4. Each request should be answered separately and in order.

5. If you object to any request or sub-part thereof on a claim of any privilege, including an assertion of the attorney-client privilege or a claim that responsive Documents constitute attorney work product, you are hereby requested to provide at the time of production

the basis for the asserted privilege or immunity, set forth for each withheld Document, including the following information: (i) the date of the Document; (ii) the name of the Document's originator or creator, the name of the person(s) to whom it is addressed, the names of each person who was shown copies or to whom copies were distributed and the names of each person participating in the preparation of the document or in whose name the document was prepared; (iii) a general physical description of the type of Document, and the subject matter to which it pertains; (iv) the Document's current custodian; and (v) a statement of the precise basis upon which the document has been redacted or withheld, including the specific nature of the privilege or immunity claimed and the detailed ground for claiming such privilege or immunity.

6. If, for any reason other than a claim of privilege, you refuse to respond to any request herein, state the grounds upon which such refusal is based with sufficient particularity to permit a determination of whether such refusal is proper.

7. If, in answering these requests, you claim that any request or portion of a request, or a definition or instruction applicable thereto, is ambiguous, do not use such a claim as a basis for refusing to respond, but rather set forth as a part of your response the language you claim is ambiguous and the construction you have used to respond to the individual request.

8. If there are no Documents responsive to any particular request, you shall expressly state as much in your response to that request.

9. Each of the foregoing definitions and instructions is hereby incorporated by reference into, and shall be deemed a part of, each and every other definition and instruction contained herein as well as each specific request set forth below.

10. Unless otherwise specified, the Documents requested are those referring to, or created during, the period from January 1, 2011 to the present.

REQUESTS FOR DOCUMENTS

1. For each of Rhapsody's agreements with the Relevant Record Labels relating to Rhapsody's unRadio service, including any free-consumer, non-interactive, or premium service offering (collectively, the "Services"), documents sufficient to demonstrate, as of the time the agreement was executed, Rhapsody's projections for:

- (a) total performances of the labels' music through the Services;
- (b) total compensation from Rhapsody to each individual label for performances through the Services; and
- (c) the effective per-performance royalty from Rhapsody to the labels for performances through the Services.

This Request seeks documents sufficient to demonstrate Rhapsody's projections on a month-by-month basis or, if such documents do not exist, for the shortest time period for which such projections do exist.

2. For each of Rhapsody's agreements with the Relevant Record Labels relating to the Services, documents sufficient to demonstrate:

- (a) total performances of the labels' music through the Services;
- (b) total compensation from Rhapsody to each individual label for performances through the Services; and
- (c) the effective per-performance royalty from Rhapsody to the labels for performances through the Services.

This Request seeks documents sufficient to demonstrate (a), (b), and (c) on a month-by-month basis.

3. Documents discussing, analyzing, or evaluating [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] including documents sufficient to show:

(a) whether each such [REDACTED]

[REDACTED] under the agreement;

(b) the course of the parties' negotiations related to each such [REDACTED]

[REDACTED]; and

(c) Rhapsody's understanding of whether compensation under each such [REDACTED]

[REDACTED]

[REDACTED].

4. Documents discussing, analyzing, or evaluating any Rhapsody plan that had been formulated or proposed at the time the webcasting licenses with the Relevant Record Labels were entered to use the Services to promote other lines of business or sources of revenue for Rhapsody. This request does not include documents discussing, analyzing, or evaluating any Rhapsody plan that was formulated after the webcasting licenses were entered.

5. Documents discussing, analyzing, or evaluating any potential precedential effect of any agreement with the Relevant Record Labels relating to the Services on the rates to be set for webcasting by the Copyright Royalty Board.

6. Documents discussing, analyzing, or evaluating whether Rhapsody would have launched or attempted to launch [REDACTED]

[REDACTED]

PUBLIC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attachment D

PUBLIC

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

**DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (*WEB IV*)**

**Docket No. 14-CRB-0001-WR
(2016–2010)**

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS

THE COPYRIGHT ROYALTY BOARD TO:	<i>(name and address of person being subpoenaed)</i> Microsoft Corporation Corporation Service Company 300 Deschutes Way SW #304 Tumwater, WA 98501 Microsoft Mobile OY Keilalahdentie 4, FIN 02150 Espoo, Finland Company Number FI 0112038-9
1. At the Request of: <i>(party name)</i> iHeartMedia, Inc.	<i>(name, address, and telephone number of contact person)</i> John Thorne Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street N.W., Suite 400 Washington, D.C. 20036 (202) 326-7900

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection or copying of the material requested in the attached **Schedule A**.

Place: Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street N.W., Suite 400 Washington, D.C. 20036	Date and Time: April 14, 2015 at 9:00 am (EST)
Issuing Officer Signature and Title:	Date:
Issuing Officer's Name, Address, and Telephone Number:	

PROOF OF SERVICE		
SERVED	Date	Place
Served on (Print Name)		Manager or Service
Served by (Print Name)		Title
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of American that the foregoing information contained in the Proof of Service is true and correct.</p> <p>Executed on this _____ day of _____, 20__</p> <p style="text-align: right;">_____ Signature of Server</p> <p style="text-align: right;">_____ Address of Server</p>		

SCHEDULE A

DEFINITIONS

1. "Record Company" means any entity that owns sound recording copyrights, including any and all subsidiary or affiliate recording companies and labels.
2. "Nokia," "you" and "your" shall mean Microsoft Corporation and Microsoft Mobile OY and its directors, officers, board members, employees, subsidiaries, parent corporations, divisions, affiliated companies, predecessors, successors, agents, representatives, and anyone else acting on its behalf.
3. "Document" or "Documents" shall have the same meaning as the term "document" in Federal Rule of Civil Procedure 34(a)(1) and shall include all such items, including electronically stored information, that would be subject to inspection and copying under that Rule, including the original and any non-identical copy of, any written, printed, typed, photographed, or recorded materials, including but not limited to writings, notes, memoranda, agreements, contracts, drafts, mark-ups, redlined materials, proposals, offers, meeting minutes, agenda, reports, calendar or diary entries, drawings, graphs, charts, logs, photographs, phone records, tape recordings, computer disks, computer printouts or tape, email or any other data compilations from which information can be obtained or translated. The term "Document" also means every copy of a document where such copy is not an identical duplicate of the original, whether because of deletions, underlinings, showing of blind copies, initialing, signatures, receipt stamps, comments, notations, differences in stationary, or any other difference or modification of any kind.
4. "Relevant Record Labels" shall include Universal Music Group, Universal International Music B.V. (collectively, "Universal"), Warner Music, Inc., WEA International, Inc. (collectively, "Warner"), and Sony Music Entertainment ("Sony").

5. "Premium Features" shall include unlimited track-skipping, unlimited offline mixes, and high-quality audio available under MixRadio's premium service offering.

6. Whenever appropriate in these requests, the singular form shall include the plural form and vice versa. The connectors "and" and "or" are terms of inclusion, not exclusion, and they shall be construed as necessary to bring within the scope of each request each Document that, if construed otherwise, might be considered to be outside of the request's scope. The word "including" means "including but not limited to." The words "any" and "all" shall be mutually interchangeable and shall not be construed to limit any Document Request.

INSTRUCTIONS

1. These requests are continuing in nature, and in the event Nokia becomes aware of additional responsive information or Documents at any time through the conclusion of this proceeding, Nokia is requested promptly to provide such additional information or documents.

2. These requests seek information related to your activities in the United States. To the extent responsive Documents encompass activities both within and outside the United States, they should be produced in full.

3. The responses to each request shall include Documents that are within your possession, custody, or control, or are otherwise known or available to you, including Documents in the possession, custody, or control of your attorneys, agents, employees, accountants, consultants, representatives, or any other person acting or purporting to act on your behalf.

4. Each request should be answered separately and in order.

5. If you object to any request or sub-part thereof on a claim of any privilege, including an assertion of the attorney-client privilege or a claim that responsive Documents

constitute attorney work product, you are hereby requested to provide at the time of production the basis for the asserted privilege or immunity, set forth for each withheld Document, including the following information: (i) the date of the Document; (ii) the name of the Document's originator or creator, the name of the person(s) to whom it is addressed, the names of each person who was shown copies or to whom copies were distributed and the names of each person participating in the preparation of the document or in whose name the document was prepared; (iii) a general physical description of the type of Document, and the subject matter to which it pertains; (iv) the Document's current custodian; and (v) a statement of the precise basis upon which the document has been redacted or withheld, including the specific nature of the privilege or immunity claimed and the detailed ground for claiming such privilege or immunity.

6. If, for any reason other than a claim of privilege, you refuse to respond to any request herein, state the grounds upon which such refusal is based with sufficient particularity to permit a determination of whether such refusal is proper.

7. If, in answering these requests, you claim that any request or portion of a request, or a definition or instruction applicable thereto, is ambiguous, do not use such a claim as a basis for refusing to respond, but rather set forth as a part of your response the language you claim is ambiguous and the construction you have used to respond to the individual request.

8. If there are no Documents responsive to any particular request, you shall expressly state as much in your response to that request.

9. Each of the foregoing definitions and instructions is hereby incorporated by reference into, and shall be deemed a part of, each and every other definition and instruction contained herein as well as each specific request set forth below.

10. Unless otherwise specified, the Documents requested are those referring to, or created during, the period from January 1, 2011 to the present.

REQUESTS FOR DOCUMENTS

1. For each of Nokia's agreements with the Relevant Record Labels relating to Nokia's MixRadio service, including any free-consumer, non-interactive, or premium service offering (collectively, the "Services"), documents sufficient to demonstrate, as of the time the agreement was executed, Nokia's projections for:

- (a) total performances of the labels' music through the Services;
- (b) total compensation from Nokia to each individual label for performances through the Services; and
- (c) the effective per-performance royalty from Nokia to the labels for performances through the Services.

This Request seeks documents sufficient to demonstrate Nokia's projections on a month-by-month basis or, if such documents do not exist, for the shortest time period for which such projections do exist.

2. For each of Nokia's agreements with the Relevant Record Labels relating to the Services, documents sufficient to demonstrate:

- (a) total performances of each individual labels' music through the Services;
- (b) total compensation from Nokia to the labels for performances through the Services; and
- (c) the effective per-performance royalty from Nokia to the labels for performances through the Services.

This Request seeks documents sufficient to demonstrate (a), (b), and (c) on a month-by-month basis.

3. Documents discussing, analyzing, or evaluating [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] including

documents sufficient to show:

- (a) whether each such [REDACTED]

[REDACTED]

under the agreement;

- (b) the course of the parties' negotiations related to each such [REDACTED]

[REDACTED] or [REDACTED]; and

- (c) Nokia's understanding of whether compensation under each such [REDACTED]

[REDACTED]

[REDACTED].

4. Documents discussing, analyzing, or evaluating any Nokia plan that had been formulated or proposed at the time the webcasting licenses with the Relevant Record Labels were entered to use the Services to promote other lines of business or sources of revenue for Nokia. This request does not include documents discussing, analyzing, or evaluating any Nokia plan that was formulated after the webcasting licenses were entered.

5. Documents discussing, analyzing, or evaluating any potential precedential effect of any agreement with the Relevant Record Labels relating to the Services on the rates to be set for webcasting by the Copyright Royalty Board.

6. Documents discussing, analyzing, or evaluating whether Nokia would have launched or attempted to launch [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

DETERMINATION OF ROYALTY RATES)	Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND)	(2016-2020)
RECORDINGS AND EPHEMERAL)	
RECORDINGS (WEB IV))	

DECLARATION AND CERTIFICATION OF KEVIN J. MILLER
ON BEHALF OF iHEARTMEDIA, INC.

1. I am one of the counsel for iHeartMedia, Inc. ("iHeartMedia") in this proceeding, and I submit this Declaration in support of the restricted version of the Licensee Services' Motion for Expedited Issuance of Subpoena to: Beats Music, LLC, Spotify USA Inc., Rhapsody International Inc., and Nokia Corporation.'

2. On October 10, 2014, the CRB adopted a Protective Order that limits the disclosure of materials and information marked "RESTRICTED" to outside counsel of record in this proceeding and certain other parties described in subsection IV.B of the Protective Order. See Protective Order (Oct. 10, 2014). The Protective Order defines "confidential" information that may be labeled as "RESTRICTED" as "information that is commercial or financial information that the Producing Party has reasonably determined in good faith would, if disclosed, either competitively disadvantage the Producing Party, provide a competitive advantage to another party or entity, or interfere with the ability of the Producing Party to obtain like information in the future." *Id.* The Protective Order further requires that any party producing such confidential information must "deliver with all Restricted materials an affidavit

or declaration . . . listing a description of all materials marked with the 'Restricted' stamp and the basis for the designation." *Id.*

3. I submit this declaration describing the materials iHeartMedia has designated "RESTRICTED" and the basis for those designations, in compliance with Sections IV.A of the Protective Order. I have determined to the best of my knowledge, information and belief that the materials described below, which are being produced to outside counsel of record in this proceeding, contain confidential information.

4. The confidential information comprises or relates to information designated RESTRICTED by other participants in this proceeding. iHeartMedia has designated such information as RESTRICTED to maintain its confidentiality in accordance with the Protective Order's command to "guard and maintain the confidentiality of all Restricted materials." Protective Order at 2. The confidential information relates to: (1) contracts, contractual terms, and contract strategy that are proprietary, not available to the public, competitively sensitive, and often subject to express confidentiality provisions with third parties; and (2) material subject to third-party licenses or other limitations that restrict public disclosure.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that the foregoing is true and correct.

April 7, 2015

Respectfully submitted,

/s/ Kevin J. Miller

Kevin J. Miller
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
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kmiller@khhte.com

Counsel for iHeartMedia, Inc.



Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)

Docket No. 14-CRB-0001-WR
(2016-2020)

**REDACTION LOG FOR LICENSEE SERVICES' MOTION FOR EXPEDITED
ISSUANCE OF SUBPOENAS TO: BEATS MUSIC, LLC, SPOTIFY USA INC,
RHAPSODY INTERNATIONAL INC., AND NOKIA CORPORATION**

iHeartMedia hereby submits the following list of redactions from the Licensee Services' Motion for Expedited Issuance of Subpoena to: Beats Music, LLC, Spotify USA Inc., Rhapsody International Inc., and Nokia Corporation filed April 7, 2015, and the undersigned certifies, in compliance with 37 C.F.R. § 350.4(e)(1), and based on the Declaration of Kevin J. Miller submitted herewith, that the listed redacted materials are properly designated confidential and "RESTRICTED."

Document	Page/Paragraph/ Line	General Description
Licensee Services' Motion for Expedited Issuance of Subpoenas to: Beats Music, LLC; Spotify USA Inc; Rhapsody International Inc.; and Nokia Corporation	p. 2, fn. 4, lines 5-6, 7	Contains information designated restricted by other participants
Attachment A, Subpoena to Produce Documents, Information, or Objects to Beats Music – Schedule A	p. 7, para. 3, lines 1-5	Contains information designated restricted by other participants
	p. 7, para. 3a, lines 1-2	Contains information designated restricted by other participants

Document	Page/Paragraph/ Line	General Description
	p. 7, para.3b, lines 1-2	Contains information designated restricted by other participants
	p. 7, para. 3c, lines 1-3	Contains information designated restricted by other participants
	p. 7-8, para. 5, lines 2-10	Contains information designated restricted by other participants
Attachment B, Subpoena to Produce Documents, Information, or Objects to Spotify USA, Inc. – Schedule A	p. 7, para. 3, lines 1-6	Contains information designated restricted by other participants
	p. 7, para. 3a, lines 1-2	Contains information designated restricted by other participants
	p. 7, para.3b, lines 1-2	Contains information designated restricted by other participants
	p. 7, para. 3c, lines 1-3	Contains information designated restricted by other participants
	p. 8, para. 6, lines 2-10	Contains information designated restricted by other participants
Attachment C, Subpoena to Produce Documents, Information, or Objects to Rhapsody International Inc. – Schedule A	p. 7, para. 3, lines 1-5	Contains information designated restricted by other participants
	p. 7, para. 3a, lines 1-2	Contains information designated restricted by other participants
	p. 7, para.3b, lines 1-2	Contains information designated restricted by other participants
	p. 7, para. 3c, lines 1-3	Contains information designated restricted by other participants
	p. 7-8, para. 6, lines 2-10	Contains information designated restricted by other participants

Document	Page/Paragraph/ Line	General Description
Attachment D, Subpoena to Produce Documents, Information, or Objects to Nokia Corporation – Schedule A	p. 7, para. 3, lines 1-6	Contains information designated restricted by other participants
	p. 7, para. 3a, lines 1-2	Contains information designated restricted by other participants
	p. 7, para.3b, lines 1-2	Contains information designated restricted by other participants
	p. 7, para. 3c, lines 1-3	Contains information designated restricted by other participants
	p. 8, para. 6, lines 2-10	Contains information designated restricted by other participants

April 7, 2015

Respectfully submitted,

/s/ Kevin J. Miller

Kevin J. Miller
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
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Counsel for iHeartMedia, Inc.